

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4326 of 1998

with

CRIMINAL MISC.APPLICATION No 2568 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No.

CHHATRASINGH MAHIDA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4326 of 1998
MR PB MAJMUDAR for applicant
MR KP RAVAL, APP for opponent No. 1
NOTICE SERVED for opponent No. 2, but absent
2. Criminal Misc.ApplicationNo 2568 of 1998
MR RS PANJWANI for applicant
MR KP RAVAL, APP for opponent No. 1
NOTICE SERVED for opponent No. 2, but absent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/02/99

COMMON ORAL JUDGEMENT

Both these applications arise from the same criminal complaint filed by one Kushal Jashwantlal Sheth, residing at Panigate Police Station, Baroda, which has been registered as Panigate Police Station No.0/97. As Panigate Police Station does not have the jurisdiction to entertain this complaint, the same was transferred to Varnama Police Station and registered as Varnama Police Station I.C.R.No.122 of 1997.

2. I have heard both the above applications together and decide by this common judgment as they arise out of same complaint.

3. It is the say of the applicants that they are social workers and they are actively involved in politics. Since the elections to Lok Sabha and Gujarat Assembly were held, false complaints were filed against them and their relatives for the incidents alleged to have happened since long in order to ruin their political careers. The said complaint was registered as C.R.No.I-122 of 1997 for the offences punishable under secs.406, 384, 506(2), 504 and 114 of IPC. Therefore, the present applicants have filed the above applications before this Court under sec.482 of Cr.P.C.

4. Initially, notices were issued in both the applications and, thereafter, even Rules were issued. But opponent No.2 has chosen not to appear either personally or through advocate in both the applications. Therefore, I have heard learned counsel for the applicants and learned APP for the State.

5. Learned counsel for the applicants have argued that applicants are actively involved in politics and applicant of Cri.Misc.Application No.4326 of 1998 was elected as President of Taluka Panchayat, Baroda and was also elected as member of Vadodara District Milk Producers Union and a member of Agricultural Produce Market Committee, Vadodara. Applicants are real brothers. Drawing my attention towards the complaint, the learned counsel have argued that complainant has filed the complaint after a lapse of so many years with mala fide intention and ulterior motive for wreaking vengeance on the present applicants with a view to ruin their political career due to personal grudge. It seems from the FIR that alleged incident has taken place in 1991 and alleged complaint has been filed in the month of

August, 1998. According to him, in the complaint, no date, time, etc. are mentioned regarding the alleged incident. Simply it was mentioned that incident has taken place in the month of December, 1991 in the absence of complainant. It was further mentioned there that he came to know of the same through one Bava Parmar, still he remained silent for so many years. He has further argued that if at all any dispute is there between the parties, it is of civil nature and, therefore, it is a fit case wherein power under sec.482 of Cr.P.C. is to be exercised by this Court.

6. It is established from the record and proceedings that original complainant-respondent No.2, though served, has chosen not to appear either personally or through advocate. Therefore, I have heard learned APP for the State, Mr.K.P.Raval. Mr.Raval is not in a position to satisfy this Court as to why this proceedings should not be quashed. It is prima-facie established that the alleged incident has taken place, even according to the complainant, in the month of December, 1991 which came to his knowledge through one Bava Parmar, still he remained silent for a considerable long period and one fine morning of 29-8-1997 he has filed the present complaint implicating the present applicants.

7. It is not disputed that both the applicants are actively involved in politics. It is also not disputed that there is a dispute regarding the lease amount and/or sale consideration of the farm house between the present applicants and complainant. So, one can easily come to the conclusion that the present complaint has been filed just to take advantage of the personal enmity with ulterior motive. When the dispute mentioned in the complaint is of civil nature, even accepting the averments at their face value, this complaint requires to be quashed and set aside. A person cannot be permitted to initiate criminal proceedings for his ulterior motive.

8. As per guideline No.7 provided in the case of State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors. reported in AIR 1992 Supreme Court page 604, the Hon'ble Supreme Court has held that-

"Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Case of the present applicants falls under the above guideline. At the cost of repetition, I state that the original complainant has tried to file a criminal proceeding with mala fide and/or with some ulterior motive with a view to spite them due to private and personal grudge by converting the civil dispute into criminal one after a lapse of so many years which cannot be permitted to do so.

9. In the result, both the Criminal Misc. Applications are allowed. The complaint being C.R.No.I-122 of 1997 registered at Varnama Police Station, which is pending in the Court of learned Judicial Magistrate First Class, Vadodara, against the present applicants is quashed and set aside. Rule made absolute.

10. Original order is ordered to be kept in Cri.Misc.Appln.No.4326 of 1998 and a copy of the same in Cri.Misc.Appln.No.2568 of 1998.

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